

**Rwanda's Draft Constitution:
Some Personal Reflections On Democracy and Conflict
and the Role of the International Community**

Peter Uvin.

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Comments welcome puvin@cox.net

**Rwanda's Draft Constitution: Some Personal Reflections.
EXECUTIVE SYNTHESIS Peter Uvin.
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The main feature of the draft Constitution is its closeness to the current institutional set-up of politics in Rwanda. As we all know, this is deeply beneficial to the perceived interests of the powers-that-be: it all but guarantees the continued exercise of power by the FPR. This reflects the fact that in Rwanda, power is exclusively in the hands of the FPR, which faces no solid political, military, or intellectual challenges.

The only potential counter-power in Rwanda is currently in the hands of the international community. But counter-power only influences policy outcomes if it is exercised to that effect, which means that those who potentially possess it actualize it through explicit, unified, and sustained political involvement (involvement is more than only pressure; it also entails support and dialogue) Disjointed pressures for some changes in the text of the Constitution does not amount to the exercise of counter-power.

The provisions of the draft Constitution, combined with the extremely short time available for political mobilization, the suppression of most forms and sources of organized political dissent, and the control of the key institutions of judiciary and administrative oversight by the FPR –all guarantee a continuation of the current regime in power. What will happen later this year, then, will be an elaborate fake, but not a truly democratic event. Where does this all leave the international community?

The international community needs an approach that is neither totally condemnatory nor totally accepting. It must build on the dynamics and possibilities that exist in Rwanda, no matter how small and slow they are; work respectfully with the government, taking it on its word and moving on from there in a negotiated manner; be willing to work in a political way, with clear and explicit understandings of the political nature of the stakes and a concomitant willingness to use its counter-power; and engage for the long run and with sufficient resources, for there are no quick-fix solutions to the sort of problems Rwandans face.

The paper proposes a multi-pronged strategy:

1. Donors should rapidly, systematically, and in a concerted fashion use the existing margin to push for a small set of key changes in the most dangerous and inflexible provisions in the draft Constitution. These include the limitations on freedom of speech and political party formation (especially art. 25 & 56). The aim should not be to remove all limitations on free speech or party formation –that will not happen, nor would that necessarily be a good thing— but to make such limitations as are required of a more limited and exceptional nature, respectful of constitutional supremacy, and capable of control by the Supreme Court. The Political Parties Forum is another clause that seems designed solely to maintain the FPR's capacity to emaciate the other parties. It may not be negotiable, however.

2. The international community should then provide minimal support to the elections, incl. monitoring them honestly, and refraining from the usual (self)-congratulations on how marvelously good governance has proceeded in Rwanda, and how great the support we gave to it has been. The job of promoting democracy in Rwanda begins with the elections –it does not end there.
3. During the next 5 years, the international community should assist the GoR with the development and implementation of a coherent program of increased opening up and negotiation with much of the internal and external opposition, with the aim of slowly creating some real political opening in Rwanda. Take the GoR on its word: it has an excellent discourse about participation and democracy and good governance, and has begun creating small openings at home and abroad. None of this will come about rapidly or easily, but principled and critical support to move forwards is possible.
4. In parallel, the international community should continue investing in some of the key structural bases required for any move towards a more democratic Rwanda. Foremost, this includes decentralization with a citizenship approach (see Unsworth & Uvin Oct. 2002); mechanisms for information, learning and networking; and innovative guarantees for the independence and quality of the Supreme Court.

INTRODUCTION

2. The Constitutional Commission has put hard work and good thinking in the draft Constitution. Clear language on human rights, the separation of powers, judiciary independence, secret vote, presidential term limits, etc. are all highly positive. Significant fear, however, exists regarding key provisions limiting freedom of speech, political party formation and behavior, etc. In addition, major legal weaknesses also remain in the draft Constitution: at times, power is granted to the Parliament to essentially modify the Constitution by simple law, while at other times the Draft goes into the sort of detail that only laws should do. Other comments by constitutional legal scholars have already pointed out in detail some such issues. There seems to exist a willingness on the part of the Constitutional Commission to improve the legal quality of the Constitution –albeit under a too tight deadline and within tight political constraints. Donors should rapidly, systematically, and in a concerted fashion use the existing margin to push for a small set of key changes that have the highest political pay-off, i.e., rather than pushing for changes in tens of points required to make this a “perfect” constitution (quite a debatable matter in any case), they should select a few changes that are crucial in terms of providing openings and undoing opportunities for abuse.

2. The main feature of the draft Constitution is its closeness to the current institutional set-up of the political game in Rwanda. The draft Constitution is thus rightly seen as deeply beneficial to the continued exercise of power by the FPR. While acknowledging that the Constitutional Commission has worked hard to consult a large number of Rwandans as well as to learn from tens of other Constitutions worldwide, and while acknowledging as well that many clauses in the draft Constitution can be intellectually defended –as could have been totally different if not opposite ones—it is clear that the content of the draft Constitution is deeply beneficial to the perceived interests of the powers-that-be. This is nothing but expectable: everywhere, major policy decisions are made by and for those who wield political power. In Rwanda, that power is exclusively in the hands of a small group of people inside the FPR: their control over Rwanda is currently totally unchecked, and they face no solid political, military, or intellectual challenges. The draft Constitution reflects this reality, and it could hardly be expected not to.

3. As a matter of fact, the only potential counter-power inside Rwanda is currently in the hands of the international community. The survival of the regime (not so much its physical or military survival as its capacity to provide a semblance of normality, a functioning state, a modicum of basic social services, in urban and rural areas, and decent salaries) depends on the international community’s continued support. Until now, this counter-power has been mostly theoretical. After all, counter-power only influences policy outcomes if it is exercised to that effect, which means that those who potentially possess it actualize it through explicit, unified, and sustained political involvement (involvement, by the way, is more than only pressure; it also entails support and dialogue). This has hardly ever happened in the last decade, however, as a result of various factors: guilt over the cowardice of the international community before and during the genocide; the political timidity that usually accompanies sovereignty; divergent assessments of trends in Rwanda between donors; and bureaucratic inertia (it is really difficult to create and implement a sustained vision, and much easier to limit oneself to small, discrete projects and occasional ad-hoc

demarches). In short, for practical, ethical, and ideological reasons, the international community has not until now acted as a counter-power. If, however, some of these obstacles can be surmounted, impact can be had (see the pressure for Rwandan withdrawal from the DRC). The international community can and should exercise its counter-power in this process of adoption and implementation of a new Constitution, while seeking to minimize its interventionism and reinforcement of outwards accountability. This paper outlines some paths to that effect.

3. As things stand, the provisions of the draft Constitution, combined with the extremely short time available for electoral mobilization, the suppression of most forms of organized political dissent, and the control of the key institutions of judiciary and administrative oversight by the FPR –all these factors together guarantee a continuation of the current regime in power. What will happen later this year, then, will look like, but not remotely be, a democratic event. All Rwandans, and most foreigners, are fully aware of this. Small modifications in the language of the Constitution will not change this outcome –although they may still be important in the longer run.

4. In the first section of this report, I will start from the current text of the draft Constitution and reflect on how donors can support a process of meaningful democratization starting from this text. In a second section, I will start not from the actual text of the Constitution, but rather from the question “what factors are likely to create violent conflict in Rwanda?” and then proceed with the next local step: “how does the draft Constitution affect these factors?” Given space constraints, I will write the rest of this paper in the form of bullet points.

PART 1. FROM THE DRAFT CONSTITUTION TO DEMOCRACY

5. Quite a few provisions of the draft Constitution are most positive from the perspective of both democratization and the prevention of violent conflict. To mention but some:

- a. Posts in government must be distributed proportional to the Parliamentary distribution; the largest party can only have 50% of these positions (40% in previous drafts!); the Prime Minister and Speaker of the House cannot be of the same party as the President; the Presidential veto can be overruled with a 60% majority
- b. structural constraints on the power of the main party, potentially forcing it into cross-party alliances and compromises –a priori not a bad idea in a country like Rwanda.

6. Multiple and strong mentions of human rights, equality and non-discrimination. Direct election of the President and most members of the House by secret ballot; term limits; the creation of the office of ombudsman; strong protection for the independence of the judiciary (and significant powers accorded to the judiciary), etc. potential counter-mechanisms to dictatorship

Some provisions, though, are deeply dangerous as well. Most discussed are:

- a. Limitations on freedom of speech, press, and association enshrined in the draft Constitution (especially art. 25) –and in the already existing law—provide enormous opportunities for abuse. There may be a margin for maneuver here for donors to insist on language that decreases the potential for abuse. The best solution may be to explicitly use the language of the International Convention on Civil and Political Rights, which does allow for limitations on the right to free speech either to protect the rights of others, or for purposes of national security, public order, etc. (art 3, also art. 20). Such restrictions are deviations from the norm, governed by clear rules, and subject to legal interpretation and jurisprudence. It may be possible to convince the Constitutional Commission of the necessity for these changes in language, not to remove all limitations on free speech –that will not happen, nor would that necessarily be a good thing— but to make such limitations as are required of a more limited and exceptional nature, respectful of constitutional supremacy, and capable of interpretation by the Supreme Court.
- b. Limitations on the functioning of political parties (art 56 for example). Some changes may well be underway here: the “suspension” clause may be significantly modified; the powers of the Forum have been reduced (“assurer la discipline” has been dropped). That said, the Political Party Forum does continue to exist and has served until now clearly a function of muzzling opposition and dissent; the limitations on local party organization also continue (art 56 foremost). Again, to the extent that the intent of these provisions is to prevent exclusion and

discrimination on the basis of ethnicity, they ought not be entirely removed –nor could they, for the Rwandans really consider them crucial. Rather, respectful but firm discussions could be held to ensure that the language is made clearer and more restrictive, for example by simply forbidding discrimination on the basis of race, ethnicity, region, or gender (art 78).

7. The selection of members of the House (24 women appointed by the towns and districts) and the Senate (appointed by various organs). As good as all of these organs are currently dominated by the FPR. In addition, the Senate is given truly extensive powers, which can be increased by law. All of the above benefits the FPR, granting it a significant capacity to co-opt or oppress all political opposition.

8. As observed by the ICG in its Nov. 2002 report, the whole set-up is part and parcel of the FPR's ideology of "consensual democracy". This approach is based on deep distrust of the Rwandan population, the prominence of a military/security logic, the fact that the FPR is without contest in control of power, as well as the conviction that outsiders cannot be relied upon to protect them (the latter conviction is entirely correct, and greatly limits the credibility of international attempts to push the FPR to put itself at risk, which is what, at the end of the day, many of the proposed changes amount to).

9. The problem is that this position, while not without intellectual and political basis, contains clear dangers. The heavy-handed and restrictive policies it results in may (are likely to) have the following negative consequences:

10. continued if not increased human rights violations are its automatic corollary, justified in the name of the greater good (stability, peace, social and mental transformation,...). this may create further violent conflict potential both inside and outside Rwanda a gradual retrenchment of the size and representativeness of the group in power is likely with such militaristic, socially isolated, and potentially uncontested power (this is already occurring or not?). as the saying goes, absolute power corrupts absolutely: abuses of power in all realms of life may increase (this again is not automatic, but likely, and may already be occurring)

11. While all this is correct and important, two points more are needed in the way of analysis.

12. First, some of the provisions of the draft Constitution –even the ones discussed above as negative—are relatively flexible, in that they provide both constraints and opportunities, depending on the broader political context. Appointed senators may use the resources and the relative security of their long-term office to ask difficult questions; coalition governments may be forced to make real compromises and respect different points of view; the impossibility to create explicitly ethnic parties may force opposition leaders to reach out more and develop more sophisticated discourses, etc. This seems unlikely at present, given the dominance of the FPR, including its capacity to use extra-legal means to impose its views, but this does not automatically follow from the inherent nature of the legal clauses themselves; rather, it results from the political context of closure and FPR monopoly that characterizes the present. If and when the FPR loosens the reigns of control a

bit; if and when the distribution of power begins to change; if and when Rwandans begin to take some more risks and speak out for real social interests –and these *are* possible trends, which the international community can support-- then these clauses may allow such change to anchor itself. While at the moment, this may seem far removed, one day (not tomorrow, admittedly, nor after the current elections) people inside and outside of the circles of power will provide contestation in Rwanda, as they do everywhere (it took 7 decades or more in Mexico and Japan for monopoly parties to be so challenged, for example, but it did happen, and when it happened, constitutional provisions such as these proved to be part of what made it possible).

13. It may be thus more important for the international community, if it seeks to use its voice to obtain changes in the Constitution, to focus only on those clauses that are truly inflexible, even in the long run –those clauses that contain only the promise of closure and abuse. The ones drastically limiting free speech seem to be foremost of them. It is not necessary (nor, for that matter, possible) to entirely remove these, but at the least, their language needs to be tightened, the exceptional nature of constraints made clearer, criteria made narrower and clearer, and judicial overview and appeal made as strong as possible. I believe it is possible to achieve this. The Political Parties Forum is another clause that has no positive or opening effect whatsoever: it seems designed solely to maintain the FPR's capacity to emaciate the other parties. This may be much harder to change.

14. Second, it is not sufficient to simply point out the dangers inherent in the FPR ideology (or the draft Constitution), and assume that the opposite policy (or constitutional clauses) contains no dangers, or that the policy has no basis. Difficult judgment need to be made:

15. To what extent is the FPR's vision at least partly based on correct or understandable assumptions? The genocidal ideology that permeated Rwandan society and allowed for mass participation, has certainly not mysteriously disappeared, for example.

16. What does history teach us? Every time Rwanda opens up to multi-party politics, this seems to lead to ethnic polarization and mass violence –whether just before independence, or in the years preceding the genocide. One can debate why this is so: is it that Rwandans are socially and culturally not ripe for democracy? That democracy is a dangerous thing in deeply divided societies? That it is not democracy but the resistance against it by elites that favor the status quo that causes the violence? That the language of radical ethnicity is the most easy to use by politicians, both those in power or those in opposition? Whatever the causes –and the scholarly literature argues any of these positions, both for the case of Rwanda and elsewhere—history gives us little hope for rapid dramatic changes.

17. What are the concrete better ideas out there? It is very revealing to read in the ICG report (Nov. 2002: p. 25) that the opposition (a “blood pact” between people allied with the genocidal machinery in need of legitimacy and some small Tutsi-dominated parties in need of military clout) has basically the same project of consensual democracy and a draft Constitution that is very similar to the one now being discussed.

Possible solutions

18. Against this background, how can the international community assist in the process of moving Rwanda towards a more democratic and peaceful state? I will discuss four possible paths here. The first “radical change” option is upheld by many as the ideal solution, but I will argue it is a dangerous, uncertain, and in any case impossible one. A second scenario is my preferred one: a multi-pronged, medium-term international engagement in Rwanda’s political development. The third scenario is the one underlying the FPR rhetoric: it is essentially a slow, “grow out of it” scenario --theoretically possible but very risky. The fourth one is a depoliticized, muddle trough scenario, resembling current practice: while most likely to occur, it is by far least desirable.

19. Two important analyses of the draft Constitution --the ICG report and Professor Reyntjens’ recent analysis—propose as the ideal solution to cancel the process leading to the adoption of the Constitution as well as the holding of elections, and to oblige the regime to organize a major political dialogue with the internal and external opposition leading to power sharing and the adoption of a new Constitution. While appealing in its clarity and radical breakthrough nature, this recommendation presents a number of serious problems. The foremost one is that it simply will not happen, for nobody wants it. The GoR would categorically refuse it and rather pay the price of reduced aid; the donors have shown not the slightest interest in it, and painted themselves in the corner with their rhetoric of democracy/elections in 2003; and it seems unclear how many of the opposition groups would be willing to honestly participate in such a dialogue as well (and which ones ought to be excluded!). Even if somehow the international community could force most of the players into such a process they do not want, it would take a long time and create a situation propitious to violence and chaos, as parties jockey for a seat at the table and for the most advantageous outcomes, while others resent their non-inclusion, and other seek to sabotage the entire process. All of this would lead to major violence. In the meantime, Rwanda would be almost un-governed, while, like in Burundi, the large majority of the population would remain silenced and overlooked. Hence, this is not a good proposition. And yet, I do realize that a political dialogue could constitute a major way to break through the current stalemate --I just do not think it can be done right now, forced, before anything else happens.

The solution I advocate consists of a multi-pronged strategy:

- a. Work immediately on a few key changes in the most dangerous provisions in the draft Constitution, along the lines of the discussion above;
- b. Let elections happen, although with minimal support. Recognize the elections for what they are, save a buck (the civic education programs, for example, the workshops in expensive hotels --there is quite some slack here!), assist with monitoring them, and be honest in what they amount to: a first incomplete attempt. Refrain from the usual (self)-congratulations on how marvelously good governance has proceeded in Rwanda, and how great the support we gave to it has been. Recognize

that international community support to democratization in Rwanda is only beginning during the coming months –not ending!

- c. Assist the GoR with the development and implementation of a coherent program of increased opening up and negotiation, with the aim of slowly creating some real political opening in Rwanda during the next 5 years. Take the government on its word: it talks a lot about participation and democracy and good governance. None of these things will come about rapidly or easily, but principled and critical support to move forwards is possible. After the elections will be the time to use counter-power.

20. In parallel, continue investing in some of the key structural bases for any move towards a more democratic Rwanda: decentralization (see the paper I co-authored with Sue Unsworth in Oct. 2002 on how aid can support a move from clients to citizens); information and networking; and significant guarantees for the autonomy and competency of the Supreme Court (see below). Again, take the government on its word when it comes to the decentralization policy and judicial autonomy.

21. A much riskier solution is the same as above but without c), i.e., without the political dialogue. This is the path the FPR seems to prefer: the slow construction of the social, economic, and eventually political bases for democracy to emerge. There is a chance this may work, as it did in East Asian developmental states. A combination of sustained economic growth that leads to widespread improvements in well-being; cooptation of fresh and competent leadership into the structures of governance (as is already happening now –see some of the senior government appointments late last year, as well as the process of local elections); a slowly growing margin for debate within and with the circles of power that feel secure about the future; an increasing margin for manoeuvre at the local level as people take initiatives for local economic development –all these factors together could create a slow and managed transition. The chance this incremental works is not very big, for many of the structural factors that could underlie such a transition may be absent in Rwanda: no independent and dynamic private sector; a history of violence, exclusion, and distrust; extreme poverty; regional instability; a militaristic and insular government. If the international community wants to support this process, it needs to keep on investing in the features of the developmental state; support significant improvements in popular well-being; and maintain constant vigilance and pressure to keep the process on its political and economic tracks, all of this over the course of a generation. This is not easy at all.

22. Worst, by far --and yet most likely to happen-- is the fourth “solution,” in which, after some disjointed pressure for changes in the draft Constitution, “elections” will be organized under significant international community cheerleading, to be followed by the usual gradual decline in aid, as many donors are disappointed, other crises take over, and interest wanes. The donor community owes it to Rwanda to avoid this outcome (note that, evidently, foremost Rwandans owe it to themselves to avoid this outcome!).

23. In short, the approach should be neither to totally condemn the regime and seek to force seemingly ideal and probably unrealizable solutions onto it, nor to totally accept the regime’s practice and stick to rhetoric, (self)-congratulation. The

international community must build on the dynamics and possibilities that exist in Rwanda, no matter how small and slow they are; work respectfully with the government, at the least taking it on its word and moving on from there; be willing to work in a political way, with clear and explicit understandings of the nature of the stakes and a willingness to use its counter-power; and engage for the long run and with sufficient resources, for there are no quick-fix solutions to the sort of problems Rwandans face.

Some Additional Remarks about the Judiciary

24. The draft Constitution accords to the judiciary –foremost the Supreme Court--major capacities to constrain the other branches of government, by enforcing rules, reviewing laws, resolving disputes, etc. Given the strong human rights references contained in the draft Constitution, an independent and activist judiciary could play a major role in limiting or undoing possible abuses, including those resulting from the restrictive speech and association clauses in the same constitution. Vice versa, an incompetent or non-independent judiciary could be a crucial tool for undermining any move towards democratization. Hence, one of the keys that will determine the impact of the Constitution on Rwandan political life will be the quality and independence of the judiciary, and especially the Supreme Court.

25. The recent history of Rwanda, under the current regime and, even more so, under the previous, demonstrates that judicial independence is extremely hard to achieve in a society characterized by extreme poverty, deep social polarization, and violent political pressure. There is thus good reason to fear that judicial independence will be insufficient to guarantee the outcomes designed by the draft Constitution.

26. The problem with this argument is that every single clause of every single Constitution real and imaginable would suffer from these real-world defects, for the material, political, and social pressures on *all* actors in Rwandan society will not disappear by a stroke of the pen, no matter how smart or well-intended the hand that holds it. Judges are not the only ones who are corruptible, subject to fear, or influenced by racist ideologies: so are politicians, including opposition ones, NGO members, journalists, ordinary people, and the like. As a result, any constitution will fail –or could be feared to fail—using these criteria. The only theoretically perfect solution to that is to design rules of the game that are considered legitimate by such a proportion of the population as to be upheld from within. Ultimately, the greatest strength of institutions, and especially meta-institutions like a constitution that lay down the rules of the game, is to be recognized and internalized by the actors whose behavior is constrained by it.

27. What does this mean for donors? First, that they ought to choose option two discussed above, and invest in such a dialogue during the years to come. Nobody can guarantee the success of this venture, but it must be attempted. In addition, donor interest in the Constitution must not stop at the moment it is promulgated and the elections are held, but must continue with a specific focus on the Supreme Court. This should go beyond the usual capacity building programs, useful as they are. It should include specific and original measures to assure the independence of the Court, such as: the long-term provision of significant salary complements; the creation of peer networks of discussion with and feedback by foreign judges; and a

strong, clearly articulated, and consistently applied commitment not to tolerate any intimidation against judges and their families. Donors need to go beyond the usual technical approach to judicial support, useful as it may be: given the centrality of the Court to Rwandan politics, an explicitly political yet hands-off approach by the international community is indispensable.

28. The nature of this approach is merely to take the GoR on its word, and create the conditions for the Constitution, as developed by Rwandans, to function –not to modify it. The Constitution does provide tools for governance, and it serves no purpose to neglect this. The job of the international community is to assist this process through critical, politically savvy, support.

PART 2. FROM CONFLICT ANALYSIS TO THE CONSTITUTION

The likely causes of mass violence in Rwanda are (in order of probability?):

- a. Aggression from outside: like under the previous regime, oppression and cooptation work relatively well internally. The foremost risk to the current Rwandan regime lies outside its borders, and the alliances this armed opposition is able to force within itself, with foreign sponsors, and, in last position, with Rwandans inside the country. This can lead to violence inside the Rwandan territory, both as a result of the attacks themselves and of the violent and typically indiscriminate counter-measures (although there have been exceptions).
- b. Violent divisions within the ruling clique, manifested in a coup d'Etat by disaffected parts of the army, or in the murder of senior people, e.g. the President of the Republic. Divisions within the army, with some remaining loyal and others rebelling.
- c. Extreme frustration and anger inside Rwanda: continued mass impoverishment, land reform that deprives large numbers of people of their land, lack of hope for a future among disaffected youth, a sense of extreme inequality, injustice and social exclusion –in short, a sense that the game is so stacked against them, and the rules so unjust, that the future will only be worse than the present, and that only radical change is possible. This can involve both Hutu and Tutsi –it is not an ethnic thing. This is not likely to happen on a massive scale.

29. Unbridled electoral competition, in which in an “all goes” atmosphere the ethnic card is played, old and new recriminations are radicalized, camps pitted against each other, insults, lies and insinuations come to dominate the political game. Local political entrepreneurs use violence, remind people of old violence, talk about the need for preventive violence at both sides, etc. Admittedly, the situation is different now from 1994. Contrary to then, the repressive machinery of the state will not carry out genocide: it has neither such ideology nor the means to achieve that end. So it would be less centralized, less fast, than before –a more spontaneous combustion, a slow but unstoppable spread of the wildfire of divisionism and violence

on the dry bush of past memories. This option is not likely to occur, however, as there is no such political opening.

30. The continued existence of an ideology of ethnic hatred and exclusionary racism. In and by itself, this will not lead to mass violence: the genocidal ideology is currently not organized in Rwanda, and internal security keeps too close an eye on everyone. But in combination with any of the above, racism – and hatred-inspired violence could spread rapidly.

31. Under status quo conditions, only the first two dynamics are likely to occur. The other three constitute major risks, but they are more remote at this point.

Apart from these five factors, there are two other less visible forms of violence that already exist in Rwanda. They both do not threaten major political violence in the short run –and might thus be overlooked in a debate like this –but they are not only unjust, but also in the long run potentially threats to stability as well.

32. One is the continued violence of human rights abuses. While the situation is not close to the one prevailing in many other countries (incl. neighboring Burundi, or, to take a few countries in the news these days, North Korea or Iraq), and while the stability that prevails in current Rwanda is crucial (war is the greatest source of human rights violations by far), it still remains that the current regime too frequently employs intimidation, imprisonment, murder, etc. to achieve its aims (note that we are talking here about what happens inside Rwanda, overlooking the stunning human rights abuses perpetrated, with Rwandan complicity, in the DRC).

33. The other is the structural violence of the growing inequality, corruption, social exclusion, and humiliation. It is not clear what changes have taken place here compared to the previous regime. Some things may have become better –the quality of exams for entry into secondary and tertiary education, for example; or the existence of stronger institutions for control of public spending—but other variables are clearly still weak (corruption and social exclusion, with a very small group of well-connected people controlling many of the benefits of the system) if not worse (inequality in all likelihood).

34. What is the impact of the draft Constitution on these factors? By itself, rather little, it seems.

35. It essentially has no impact on the three first causes of mass violence outlined in par. 22 a. It could outlaw coups d'Etat, or foreign invasions, or frustration, but that would hardly be worth much. The draft Constitution affects these variables indirectly, through the kind of political climate it allows to create, but, as we discussed, that is tributary to more than the Constitution alone.

36. On the positive side, the draft Constitution does provide significant protections against some of the elements of structural violence described in par. 23 b: equality of treatment, non-discrimination, repeated clauses against corruption, the office of the ombudsman, some of the features of the developmental state, etc. It also makes the sort of political competition that characterizes the pre-genocide period (par. 22 d)

impossible –but, as we discussed, that comes with a serious cost in terms of freedoms and carries with it long-term risks.

37. On the negative side, the draft Constitution does not provide significant protection against the kind of human rights violations described in par. 23 a. Indeed, it actually legalizes (together with laws already on the books) severe limitations on the freedom of speech and political organization that can be used against opponents. More broadly, to the extent that the Constitution allows (or is used by) the FPR to continue a full and oppressive control of the entire political, economic and social space in Rwanda, it may create the sort of frustration and anger that can that strengthen some of the dynamics described in par. 22.

38. In short, the immediate impact of the Constitution on the likely dynamics of conflict seems to be rather small. Its indirect, longer term impact can be important, but is tributary to dynamics that lie beyond the Constitution *sensu strictu* and reside in the broader context of the evolution of Rwandan society. As discussed in par. 14 ff., the international community can play a major role in these trends, even with the Constitution as it is (or, hopefully, improved significantly). The real challenge for the donors as they think about the Constitution and conflict, then, lies more in what they will do in the five years to come, starting from the Constitution, than in the short term. Significant further smart political thinking is required. The willingness to solicit the sort of opinions about the Constitution as discussed here is an excellent start.